BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities.	R.05-04-005 (Filed April 7, 2005)
Rulemaking for the Purposes of Revising General Order 960A Regarding Informal Filings at the Commission	R.98-07-038 (Filed July 23, 1998)

COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF COMMISSIONER CHONG (URF PHASE II)

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Statutes

Public Utilities Code

CPUC Decisions

Rules of Practice and Procedure

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Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities.	R.05-04-005 (Filed April 7, 2005)
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COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF COMMISSIONER CHONG (URF PHASE II)

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedures the Division of Ratepayer Advocates (DRA) submits these comments on the Proposed Decision (PD) of Commissioner Chong, mailed July 23, 2007. As noted in DRA's concurrently filed comments on the companion Proposed Decision of Commissioner Chong regarding General Order (GO) 96-B,[1] several of DRA's comments below are also applicable to the proposed modifications to the Telecommunications Industry Rules for GO 96-B.

I. INTRODUCTION

DRA agrees with several key findings and conclusions in the PD. Specifically, DRA concurs with the legal conclusions that the Commission lacks the authority to mandate detariffing and that detariffing removes a service provider's ability to invoke the filed rate doctrine or to rely on Commission tariff approval as grounds for any

[1] Proposed Decision of Commissioner Chong in Rulemaking (R.) 05-04-005/R.98-07-038, mailed July 23, 2007, entitled "Opinion Adopting Telecommunications Industry Rules."

limitation of liability.[2] DRA also agrees with the clarification that D.06-08-030 did not grant carriers subject to the "Uniform Regulatory Framework" (URF) the unilateral right to lift asymmetric regulations by advice letter where such requirements pertain to basic service or were requirements imposed on a carrier as a result of an enforcement action, complaint, or merger proceeding.[3]

DRA also commends the Assigned Commissioner for including important consumer protections in the PD, such as the requirements that all URF carriers must (1) at all times and without charge, web publish and also provide without charge via request to a toll-free number the applicable retail rates, charges, terms and conditions for any service available to the public on a detariffed basis, (2) maintain an archive of their retail rates (both tariffed and detariffed), available on the web for three years, with dates of effectiveness and geographic applicability clearly delineated, and (3) provide 30-day notice to their contract customers of any increase to rates, or more restrictive terms or conditions, and absent consumer consent, permit the customer an opportunity to opt out of the contract without any penalty.[4]

Nonetheless, the PD stops short of the steps necessary to achieve the full consumer benefits of the detariffing policies that it adopts. Further, certain legal and factual errors and unclear passages in the PD create the risk that its ultimate effect would actually be anti-consumer. In the discussion that follows, DRA identifies the problem areas of the PD and explains how the Commission can rectify these errors and clarify its intent in its final decision on the detariffing and implementation issues addressed in the PD.

[2] PD at 49-51 and 61, respectively.

[3] PD at 7-8.

[4] PD at 38 (items 1 and 2) and 38 (item 3).

II. DISCUSSION

A. The PD Legally Errs by Failing to Allow Challenges to Unjust and Unreasonable Rates

The PD's basis for rejecting DRA's proposal to provide for suspending tariff filings that would result in an unjust and unreasonable rate is in error. The PD relies on D.06-08-030 to find that competition alone will ensure just and reasonable rates without any further Commission oversight, even for basic services.[5] This reasoning is inconsistent with both the Commission's legal obligations under Public Utilities (P.U.) Code § 451, and key findings regarding those obligations in Commissioner Chong's concurrent Proposed Decision in Rulemaking (R.) 06-06-028.[6]

The CHCF-B PD states:

> Unaffordable rates that undermined universal service goals would not be considered "just and reasonable" as required by Pub. Util. Code § 451. In this regard, the Commission is obligated pursuant to Pub. Util. Code § 451 to ensure that "[a]ll charges demanded or received by any public utility… for any service rendered … be just and reasonable."[7]

Further, the CHCF-B PD finds that, although "competitive forces can be relied upon to a greater degree than in the past to meet universal service goals," competition alone is not sufficient to achieve these ends [8] DRA submits that competition cannot be insufficient to "ensure that universal service goals are met" and yet at the same time be sufficient to ensure just and reasonable rates.[9] The CHCF-B PD implicitly acknowledges this point when it states that, while competitors have the "*capability* to serve high cost areas," they may lack the actual capacity *or the ability to do so at a*

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[5] PD at 28.

[6] R.06-06-028, Proposed Decision of Commissioner Chong, mailed 8/3/07 ("CHCF-B PD").

[7] CHCF-B PD at 32, footnote omitted.

[8] CHCF-B PD at 27.

[9] CHCF-B PD at 25.

reasonable cost.[10] Because a competitor must recover its costs through its rates, the high cost of competing in certain areas equates to a limit on the ability of competition to constrain high prices in those same areas.

Although the CHCF-B PD suggests that the continued availability of CHCF-B support in very-high-cost areas (taken together with competitive forces) will act to ensure just and reasonable rates for basic *residential* services without further Commission oversight,[11] there is no comparable mechanism to ensure the effectiveness of competition to constrain prices for *business* services in those same high-cost areas. Yet, URF carriers have unlimited flexibility to set prices for business services, including geographically deaveraged prices.[12] Thus, business customers in high-cost areas face a real risk of unjust and unreasonable rates. This risk is especially acute in areas in which competitors have yet to build facilities. As the Commission should be aware, telecommunications plant cannot be deployed instantaneously. It requires planning, permits and facility construction, all of which takes considerable time. Thus, small business customers in particular face the possibility that the URF incumbent local exchange carriers (ILECs) will impose massive rate increases that target geographic areas without competition. Given the lack of competition in those areas, there is no legal basis for the Commission to conclude without review that competition has ensured "just and reasonable rates," as required by P.U. Code § 451. Nor can the Commission be certain, without review, that geographically deaveraged rates will meet the federal statutory requirement that rural rates *for all services* be reasonably comparable to urban rates for comparable services.[13]

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[10] CHCF-B PD at 31.

[11] CHCF-B PD at 25-27.

[12] D.06-08-030 at 164.

[13] Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. §§ 151 *et seq.*, (hereinafter, "Telecom Act"), § 254(b)(3).

Therefore, at a minimum, customers in high-cost areas still requiring a CHCF-B subsidy to support universal service also require protection from potentially unreasonable rate increases proposed by advice letter. To meet its statutory obligations, the Commission must retain some mechanism for protesting and suspending proposed rate changes to tariffed services.

Moreover, DRA respectfully submits that it is not wise regulatory policy to embark on a major deregulatory experiment without safeguards in place that allow the Commission to act rapidly should rates appear to be increasing unreasonably. The PD goes too far toward opening California to the same type of market manipulation as occurred when electricity was deregulated.

B. The PD Does Not Go Far Enough to Eliminate Regulatory Protections for URF Carriers

The PD correctly finds that, once services are detariffed, "since carriers will no longer be required to file rates, there is no logical reason to continue to afford them the protection of the filed rate doctrine" and that "detariffed services will not be subject to the tariffed limitations of liability."[14] However, the PD also finds that rates filed for all or nearly all services will not be subject to Commission review.[15] A rate that is neither reviewed by the Commission nor subject to protest provides no more consumer protection – and embodies no more Commission "authorization" – than a detariffed rate that is not filed with the Commission at all. Thus, the PD's basis for removing from tariffed services both the protections of the filed rate doctrine and of tariffed liability limits applies with equal force to *all* tariffed services for which the Commission does not review and approve rates. Therefore, to be internally consistent, the PD should be modified to eliminate the carrier protections of the filed rate doctrine and tariffed limitations of liability for *all* services, tariffed or detariffed, for which consumers do not receive the protections of the right to protest rates and Commission review and approval of carrier-proposed rates.

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[14] PD at 61.

[15] PD at 28.

C. The PD Errs in Rejecting Important Contract Disclosure Requirements

The PD errs by failing to adopt basic disclosure requirements to protect consumers of detariffed services.[16] The existing tariffs include layers of consumer protection that were built up over many years, with substantial Commission consideration. The PD would now allow the URF carriers to eliminate those protections by detariffing services with nothing at all in their place. That fundamental shift in the balance of consumer responsibilities for managing the terms of their telephone service goes too far, too fast.

DRA urges the Commission to revise the PD to include individual evaluation and consideration of each of the items in the consumer protection package proposed by TURN.[17] Further, DRA recommends that the Commission adopt those aspects of the TURN package that are most essential to protecting consumers as they adapt to a new environment with detariffed arrangements for basic telephone services. At a minimum, the Commission should modify the PD to mandate that contracts must inform customers of their right to submit complaints to the Commission for investigation. As the PD notes, P.U. Code §§ 495.7(c)(3)-(6) require the Commission to ensure that "aggrieved customers have access to low-cost, effective, and efficient avenues for relief."[18] Customers cannot plausibly pursue relief in an efficient manner if they are not informed of the resources available to them for that purpose. Thus, the lack of any mandatory notification of customer complaint rights under contract falls short of meeting the spirit, if not the letter, of the P.U. Code requirements and is, at a minimum, poor policy, if not outright legal error.

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[16] PD at 61.

[17] *See* DRA Reply Brief, 10/13/06, at 13-14 for a summary of TURN's proposals.

[18] PD at 47.

D. The PD's Definition of "Basic Service," as Applied to P.U. Code §495.7, Lacks Legal Support

Ostensibly in reply to DRA, the PD asserts that the Commission's use in the URF decisions of the phrases "basic service" and "basic exchange service" are interchangeable with the phrase "basic residential service." In other words, both terms are meant to exclude basic exchange service for business customers.[19] This clarification does not, however, address a significant legal problem with the PD's detariffing proposal. It is P.U. Code § 495.7, not the Commission's URF decisions, that excludes "basic exchange service" from the services for which detariffing is possible. Hence, it is the *Legislature's intent* in using that phrase, not the Commission's, that is relevant in determining whether detariffing of business basic exchange services is legally permissible.[20] The PD lacks any specific analysis showing that the Commission reviewed the Legislative intent and is satisfied that the Commission's interpretation is consistent with that intent. In the absence of such an analysis, the most plausible reading of P.U. Code § 495.7 precludes detariffing of *both* business and residential basic exchange services, not just one or the other of those services. Thus, as written, the PD's decision to allow URF carriers to detariff basic business services is legal error.

E. The PD Unnecessarily Maintains and Even Fosters Regulations that Are Not Uniform

Although a Commission goal is to establish a uniform regulatory playing field for intermodal competition, the PD recognizes that permissive detariffing, such as it now proposes, "may lead to the opposite result."[21] The PD, however, finds that its preferred approach of mandated detariffing is barred by existing statutes,[22] a conclusion with which DRA agrees. Unaccountably, however, the PD fails to address

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[19] PD at 54-55.

[20] DRA Opening Brief, 10/3/06, at 9-10.

[21] PD at 51.

[22] PD at 49-51.

DRA's analysis explaining that a partially detariffed service environment will be problematic.[23]

Instead, the PD exacerbates the inherent difficulties of partial detariffing by proposing steps that will virtually ensure the indefinite continuation of a confusing mix of tariffed and non-tariffed rates and terms. Specifically, the PD perpetuates the advent of new tariffs by allowing for new services to be tariffed yet limits the time in which existing tariffs may be withdrawn.[24] The PD does not provide a compelling basis for either of these deviations from the Commission's apparent desire to eliminate tariffs entirely. Moreover, the PD does not propose that the Commission will take steps to modify legislation that inhibits eventual full detariffing. These proposals will maintain a partially tariffed environment for some URF carriers and thus, are inconsistent with the Commission's stated preference for full detariffing.

F. To Work as Intended, the PD Must Impose More Meaningful Internet Disclosure Requirements

DRA applauds the PD's proposal to require Internet access to both tariffed and detariffed service rates, terms, and conditions.[25] As DRA demonstrated, however, the URF carriers can, and have, made online tariffs useless as a source of information for end users by making the relevant information in them practically impossible to find.[26] Absent more significant requirements than the PD provides, DRA sees no reason to believe that the PD's requirements for web-published information about rates and service terms will be more helpful to end users than are today's online tariffs.

Consumers will not fully benefit from Internet access to detariffed service rates and conditions if they must divulge significant personal information or navigate through an aggressive effort to sell high-margin services merely to access basic

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[23] DRA Reply Brief, 10/13/06, at 10-12.

[24] PD at 53-54.

[25] PD at 38.

[26] DRA Opening Brief, 10/3/06, at 13.

information about available services and rates.[27] In a competitive environment, the Commission can anticipate that the URF carriers will try to turn the Commission's efforts to get information to consumers into their own profit opportunity. Thus, if the Commission seeks to improve the function of the competitive market by improving consumer access to data about services and rates, it should modify the PD to mandate that the URF carriers must provide Internet rate and service information in a format that does all of the following: (1) allows easy access to rates and terms; (2) allows easy comparison of alternatives by a typical end user; (3) requires the minimum necessary information from the end user; (4) ensures that any information obtained from the end user will be discarded and will not be made available to carrier or third-party marketers;[28] and (5) is free from marketing content in the portion of the Web site that contains the Commission-required information.

G. The PD Would Make It Impossible to Detect Abuses by URF Carriers, Particularly with Respect to Individual Case Basis Contracts

The PD relieves the URF carriers of the obligation to make any further Commission filings once a service has been detariffed (such as filing advice letters concerning changes to detariffed services or filing contracts).[29] Inherently, therefore, the Commission will have less access to information that would enable it to detect abuses, including anticompetitive behavior and discriminatory pricing.

The Commission will, however, have access to some of the data needed to monitor for such abuses as a result of the PD's requirement that URF carriers webpublish and archive data about prices, terms and conditions for both tariffed and

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[27] DRA Opening Brief, 10/3/06, at 14.

[28] This refinement is necessary to safeguard customer privacy, an obligation the PD recognizes at 47.

[29] PD at 53. By eliminating the requirement for the URF carriers to file contracts, the PD changes the outcome of an issue that was litigated and decided in the URF I decision. D.06-08-030 at 187. Thus, this change is not properly within the scope of the Phase 2 decision. DRA Reply Brief, 10/13/06, at 12.

nontariffed services.[30] One apparent loophole exists: the PD does not explicitly require that Individual Case Basis (ICB) offerings must be posted on the URF carrier's Internet site. Thus, certain URF carrier rates and service conditions may become invisible, even to the Commission.

Without maintaining some visibility of the prices and terms in ICB contracts, the Commission cannot plausibly guard against discriminatory, anticompetitive or predatory behavior, which was the Commission's rationale in the URF I decision for the requirement to file contracts.[31] To avoid this problem and to enable the Commission to fulfill its legal mandates, the PD should be modified to require that prices, terms, and conditions for *all* service arrangements, including nontariffed ICB contracts, be posted on the URF carriers' Internet sites.

H. The PD's Timeline for Reviewing Protested Advice Letters Is Too Truncated in Some Cases

The PD proposes that Staff should complete review of advice letter protests within 60 days when possible, and that all such reviews should be decided "no later than 150 days after the date of filing of the advice letter."[32] These limits are likely to be impractical in some cases. They also provide an incentive to the URF carriers to delay in responding to discovery related to Staff advice-letter investigations.

For example, one valid basis for an advice letter protest is that a proposed increase to a basic service rate would finance the cost of deploying a network to provide video service.[33] Testing any such allegation would require discovery, which often involves objections, negotiations, and at least one law and motion hearing. The existence of the 150-day limit would provide a strong incentive to URF carriers to delay providing any relevant data adverse to their position for as long as possible.

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[30] PD at 38.

[31] D.06-08-030 at 187.

[32] PD at 23.

[33] PD at 22-23.

To remove the incentive for URF carriers to thwart legitimate Staff investigations of advice letter protests, the Commission should drop the artificial time limit for investigating and resolving those protests. At the very least, the Commission should allow Staff to request an extension of the 150-day limit for good cause shown.

A. The PD Unreasonably Places the Burden for Advice Letter Filings on Non-Carrier Parties

1. The PD's Approach to Improper Advice Letter Filings Gives URF Carriers Every Incentive to Engage in Such Improper Filings

The PD shifts the burden for any improperly filed advice letter (*e.g.*, an attempt to modify a merger condition through an advice letter filing rather than a petition for modification of the Commission's merger decision) entirely away from the URF carriers. The PD provides that the Commission may, after the fact, reject an improperly filed advice letter and order some "remedial action."[34] This policy gives the URF carriers every incentive to file improper advice letters. Should the Commission fail to detect the improper filing, the carrier would benefit by avoiding the level of review that the Commission deemed appropriate for the outcome that the carrier seeks. Should an improper filing be detected, the URF carrier is no worse off than if it had not filed the advice letter.

Instead of merely erasing the effect of an improper filing, the Commission should adopt a significant penalty for improperly filed advice letters. Only in that manner will the URF carriers have an incentive to follow the Commission's new guidelines.

2. The PD's Policies Governing Detariffing Advice Letters Unduly Burden Non-Carrier Parties

The PD places a huge burden for ensuring that detariffing filings are reasonable onto Staff and other parties, and none on the URF carriers themselves.

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[34] PD at 20.

The PD's 20-day protest and 30-day review periods for detariffing filings[35] also provides an incentive to the URF carriers to make many large detariffing requests at the same time and to provide as little supporting detail and description as possible. The process that the PD would adopt also provides an incentive to URF companies to hide violations, which would become automatically effective. It is unreasonable to allow URF companies to withdraw hundreds or thousands of pages of tariff and place the burden on other parties and on Staff to find any hidden violations, and particularly to do so on a very short deadline.

To ease the burden on Staff and parties, the Commission should modify the PD to provide for a procedurally adequate (20-30 days) review time for detariffing proposals (particularly when many such filings are occurring simultaneously or a very large filing is made). Further, the PD should mandate that the URF carrier must provide clear documentation about what is being removed from the tariff as part of its filing. Also, the burden should be squarely on the URF carriers to certify that no regulations put in place due to an enforcement, complaint, or merger order is being removed as part of the detariffing proposal. As discussed above relative to other advice letter filings, the Commission should also modify the PD to impose penalties on the URF carrier for an improper filing.

B. Certain Policies Developed in the PD Require Clarification

The Commission should modify the PD to clarify the following issues.

- The PD adopts several important protections for contract customers, including that they should receive 30-day advance notice of rate increases or more restrictive service terms or conditions and an opportunity to opt out of the contract without penalty in response to such changes.[36] While DRA applauds the intent of these protections,

[35] PD at 51-52.

[36] PD at 38.

the PD undermines their potential effectiveness by prefacing the sentence describing these protections with the phrase "if a carrier incorporates by reference …." This phrase seems to imply that the consumer protection rights are only available if the service rates and terms are not built directly into the URF carrier's contract with the end user. It makes no sense to allow an URF carrier to increase rates or impose restrictive new conditions without giving the customer notice or an opportunity to escape a contract simply because the contract terms and rates are not included directly in a customer's contract, but simply are referenced therein. Because this approach would create havoc in the marketplace, DRA presumes that this potential limitation to a customer's rights was inadvertent and that it will be removed from the decision.

Further, in implementing a shift from tariffed rates to use of contracts, the Commission should be mindful of the potential for utilities to develop adhesion contracts for small business or even, possibly, residential customers. An adhesion contract is "a standardized contract that, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it".[37] In the interests of efficiency for utilities, consumers, and the courts, the Commission should consider adopting rules which would provide protection for consumers against broadly used adhesion contracts for telecommunications services. One means to develop such rules would be via future workshops or an additional round of comments.

[37] 14 CalJur 3d, Contracts, § 10, p. 213, citing *Steven v. Fidelity & Cas. Co of New York* (1962) 58 Cal2d 862.

- The PD should clarify that basic terms and conditions remaining in the tariff continue to apply even to customers of services that are detariffed. For example, if an URF carrier has tariffed service conditions that require it to advise residential customers of available low-cost services, those conditions were presumably intended to apply to *all* interactions with residential customers, regardless of whether the customer subscribes to a service that is still included in the tariff or to one that has been detariffed. Likewise, tariffed rules and protections related to issues such as deposit and credit requirements and warm-line service should apply to all customers, not just to those who happen to subscribe to a service that is still tariffed.

- The PD retains tariffs for "9-1-1 or other emergency services," but does not define "emergency services" or identify those other services.[38] This lack of clarity may cause confusion. For example, some customers may have ordered call waiting or a distinctive ringing option as an emergency service. It is not clear from the PD's language whether the Commission would include such services in its list of exceptions. The Commission should specify which "other emergency services" it intended to reference.

- The PD is ambiguous regarding potential grounds for advice letter protests on the basis that they relate to topics such as service quality that were excluded from URF.[39] The Commission should modify the PD to provide a list of all excluded topic areas, instead of leaving them to be addressed one-at-a-time as part of the expedited advice letter review process.

[38] PD at 52.

[39] PD at 22 and 58.

III. CONCLUSION

For all of the reasons discussed above, DRA recommends that the Commission modify the PD to eliminate the legal and factual errors that DRA has identified and to clarify the Commission's intent with respect to the issues discussed in Section II.J herein.

Respectfully submitted,

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August 13, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **"COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF COMMISSIONER CHONG (URF PHASE II)"** in **R.05-04-005 and R.98-07-038** by using the following service:

[**X**] **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

[ ] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on the **13th** day of **August, 200**7 at San Francisco, California.

/s/ REBECCA ROJO

Rebecca Rojo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

* *

APPENDIX

Findings of Fact

1. Consolidation of the URF and GO 96-B proceeding will help us to coordinate issues that overlap between the proceedings and to address questions of how or whether GO 96 procedures should relate to URF advice letters.

2. D.06-08-030 granted carriers broad pricing freedoms concerning many telecommunications services, new telecommunications products, bundles of services, promotion, and contracts. It also simplified tariff procedures and made tariffs effective one day after filing and required that all carriers provide a thirty-day notice to customers of any price increase or more restrictive term or condition.

3. On December 21, 2006, the Assigned Commissioner issued a revised Scoping Memo seeking comment on, among other things:

i) the relationship between one-day effective advice letters and the notice and protest requirements of GO 96-A and the Public Utilities Code and prior Commission decisions;

ii) whether to detariff telephone service other than basic exchange service;

iii) clarifying the scope of the asymmetric administrative process language of Ordering Paragraph 21 of D.06-08-030; and iv) whether company-specific marketing and disclosure requirements imposed as a condition or requirement resulting from an enforcement or complaint case should be continued, or whether, in light of changed market conditions, they may be lifted through the filing of an advice letter.

4. In adopting the one-day filing procedure in D.06-08-030, we wanted to provide URF Carriers with the ability to innovate and offer new services or rates, terms, and conditions without regulatory delay.

5. There are Commission precedents for advice letters effective one day after filing. However, the precedents, in particular, Res. T-15139, do not provide advice letter procedures that are consistent with the Commission's intent in D.06-08-030.

6. GO 96-B provides an adequate framework for URF advice letter filings and such advice letters should be filed pursuant to General Rule 7.3.3 (effective pending disposition).

7. Tier 1 under GO 96-B is well-suited to the filing of URF advice letters. Because an advice letter filed under Tier 1 may be effective immediately, Tier 1 enhances the ability of market participants to act quickly in competitive conditions.

8. Tier 1 advice letters may ~~not~~ only be suspended if it is found to result in rates that would be unjust or unreasonable. Tier 1 also provides flexibility: If the carrier so chooses, it may designate an effective date later than the filing date, or it may file the advice letter under Tier 2 (effective upon staff approval) if the carrier for whatever reason desires to have prior regulatory approval before taking a particular action.

9. If there is a protest to a Tier 1 advice letter, staff will review the issues raised by the protest. If the Commission or staff finds that the advice letter was impermissibly filed under Tier 1, the carrier may be required to withdraw the filing and take other action as the Commission may require.

10. The large local exchange carriers object to the tier structure of GO 96-B, but they have not analyzed the Commission precedents for one-day filing or recognized that Tier 1 under GO 96-B would promote streamlined regulation. They also do not offer alternative guidelines for processing the URF advice letters.

11. The competitive advantage enjoyed by VoIP and wireless carriers, who do not have to file advice letters at all, is lessened by our adoption today of Tier 1 procedure for URF advice letters, allowing them to become effective immediately. Detariffing can further offset this advantage.

12. DRA and TURN propose to apply GO 96-B procedure, in modified form, to URF advice letters. ~~However, their proposed modifications are inconsistent with the principles and goals of URF.~~

13. GO 96-B recognizes the emergence of alternative regulatory approaches at this Commission, and the greater flexibility we have accorded utility management in all the regulated industries.

14. In competitive conditions, market participants must be able to act quickly. Tier 1 procedures enable them to do so because Tier 1 advice letters are effective upon filing, and because they can only ~~are already in effect, they may not~~ be suspended in limited circumstances. However, significant penalties should apply if URF Carriers misfile advice letters as Tier 1.

15. There is no real benefit to have a one-day delay between filing and effectiveness of an advice letter.

16. Under GO 96-B, the grounds for protest are more narrow ~~where the Commission has determined not to regulate rates~~.

17. We found in Phase I of the URF proceeding that Verizon, AT&T, Frontier, and SureWest lack significant market power with respect to any retail voice communications service offered within their service territories but that there may not be sufficient competition in all areas to ensure just and reasonable rates or to maintain current universal service levels.

18. In D.06-08-030, we found that the market for all retail voice communications services throughout the service territories of Verizon, AT&T, Frontier and SureWest is competitive and rejected evidence that market share and entity size indicate that a market is not competitive.

19. We rely on the market power findings of D.06-08-030 that the four major ILECs lack market power.

20. We adopt new rules for carriers that seek to detariff to satisfy the requirements of Pub. Util. Code Section 495.7(c)(1) and (2). In particular, we require carriers that detariff services to make available, at no cost, to the consumer information that is substantially equivalent to information previously contained in their tariffs by

posting the rates, terms and conditions for detariffed services on their publicly available websites and providing a toll-free number for consumers to call to obtain a copy of rates, terms and conditions. We also require that carriers archive this information for three years, and make this archive available to the public. All of this information should be in a format that: (1) allows easy access to rates and terms; (2) allows easy comparison of alternatives by a typical end user; (3) requires the minimum necessary information from the end user; (4) ensures that any information obtained from the end user will be discarded and will not be made available to carrier or third-party marketers; and (5) is free from marketing content in the portion of the Web site that contains the Commission-required information.

21. There are ~~existing Commission~~ rules and safeguards (including those against cramming and slamming) in place to protect consumers ~~against fraud~~ in existing tariffs some of which should be included in contracts once a service a detariffed. For example, all contracts should advise customers of their right to file a complaint with the Commission. The Commission has also adopted enhanced investigation and enforcement capability in the Telecommunications Fraud Unit and a consumer fraud toll-free hotline.

22. URF Carriers lack market power and lack the ability to engage in the kind of anti-competitive behavior referenced in Pub. Util. Code Section 495.7(d). We are not deregulating resale rates, and we require that URF Carriers post rates, terms, and conditions for services on their websites, including all individual case basis contracts; thus, URF Carriers will not be able to engage in anti-competitive pricing without detection.

23. We have deregulated all but Basic Service rates, and thus eliminated the financial incentive for a licensed carrier to engage in cross-subsidization with an unlicensed affiliate.

24. Tariffs afford carriers protection under the Filed Rate Doctrine and limitation of liability provisions. Tariffs are often cumbersome, legalistic and unwieldy documents that are difficult for most consumers to read or understand.

25. It is desirable to establish detariffing procedures for URF Carriers. The Commission's existing rules together with those adopted today will provide adequate protection for consumers.

26. We do not establish mandatory detariffing procedures at this time. However, the Commission may pursue authorization to do so in the future. ~~Instead, we permit carriers to apply to detariff by filing Tier 2 advice letters pursuant to GO 96-B within an 18 month implementation period after the effective date of this decision.~~

27. If detariffing filings are well documented and are reasonable in size, there is no protest to a Tier 2 advice letter seeking to detariff services and the advice letter is otherwise in compliance with GO 96-B and the services do not fall within the categories for which we prohibit detariffing, the advice letter will be ~~is deemed~~ approved.

28. If a Tier 2 advice letter is protested, staff will review the protest under the procedures set forth in General Rule 7.6.1 of GO 96-B. Since the grounds for protest are narrow, staff will usually be able to approve or reject most ~~the~~ advice letters by the end of the initial 30-day review period.

29. Detariffing of basic service is not permitted under Pub. Util. Code Section 495.7.

30. Detariffing of resale service is outside the scope of this proceeding.

31. On a prospective basis, a carrier may not file an advice letter to remove a requirement or condition in its tariffs resulting from an enforcement, complaint, or merger proceeding.

32. The 911 system provides the public an important public service that must be available to all phone customers and must not be detariffed.

33. Carriers may not detariff services offered by an interexchange carrier that allows a consumer to dial around a local exchange carrier to use the services of the interexchange carrier without a contract.

34. Carriers may not detariff a service that was not granted full pricing flexibility in D.06-08-030, such as resale services.

35. Carriers may not detariff obligations pursuant to existing state or federal law, including Carrier of Last Resort obligations.

36. Any conditions or requirements imposed in a Commission decision may be lifted only by demonstrating compliance with its terms, and by a subsequent Commission decision.

37. We will address the issues raised by protests to the AT&T advice letters 28800 and 28982 after we address the request for evidentiary hearings on that issue.

Conclusions of Law

1. D.06-08-030 should be modified such that the URF advice letters formerly qualifying for effectiveness one day after filing must now be filed under the procedures for Tier 1 advice letters, as those procedures are set forth and explained in D.07-01-024.

2. Under GO-96-B, the grounds upon which an advice letter may be protested are limited. For example, ~~where the Commission has granted utilities full pricing flexibility, which it has done for URF Carriers with respect to many services in D.06-08-030,~~ an advice letter increasing a rate for one of these services may ~~not~~ be protested an unreasonable.

3. The competitive advantage enjoyed by VoIP and wireless carriers over carriers that file advice letters arises from federal preemption over certain aspects of VoIP and wireless service. The advantage does not result from any action taken in the URF or GO 96 rulemakings.

4. GO 96-B provides procedures that are consistent with the policies we adopted in D.06-08-030 and should govern advice letter filings under URF.

5. Pub. Util. Code Section 495.7 authorizes the Commission, by rule or order, to establish procedures to detariff a service if the Commission finds that the telephone

corporation lacks significant market power for that service for which an exemption from tariffing requirements is being requested.

6. The requirements of Pub. Util. Code Section 495.7 have been met for the Commission to establish detariffing procedures.

7. Section 495.7 does not permit detariffing of basic exchange service. We interpret "basic exchange service" to mean traditional measured and flat rate residential and business local exchange services~~"basic service," as defined in D.96-10-066~~.

8. We rely on the record in Phase I of the URF proceeding to find that Section 495.7(b)(1) is met in most situations.

9. The Commission considered various criteria including market share, but did not rely on market share in determining that AT&T, Verizon, Frontier, and SureWest lack significant market power. Pub. Util. Code Section 495.7(b)(1) does not require that the criterion of "market share" be the sole factor to consider in assessing a carrier's market power.

10. Pub. Util. Code Section 495.7(c) is met, because in addition to the safeguards adopted herein there are existing statutes and rules that address the safeguards that are necessary to protect consumers prior to establishing detariffing procedures.

11. We adopt new requirements for carriers seeking to detariff to satisfy Pub. Util. Code Section 495.7(c), including the requirement that carriers detariffing their services must make available to the public their rates, terms, and conditions for detariffed services on their websites and provide a toll-free number for consumers to call to obtain a copy of rates, terms, and conditions.

12. General contract principles prohibit a carrier from unilaterally changing rates, terms, or conditions to a contract with a customer.

13. Carriers that enter into a term contract (with early termination fees) with a consumer for detariffed services shall not unilaterally change rates, terms, or conditions

to the term contract unless the carrier has provided the customer 30-day notice and received consumer consent for the new rates, terms, and conditions.

14. We conclude that Pub. Util. Code Section 495.7(d) is satisfied under URF. We find that URF Carriers that are incumbent local exchange carriers lack market power ~~throughout their service territories~~ and also lack the ability to engage in anti-competitive pricing in most areas, and URF Carriers lack incentive to engage in cross-subsidization with an affiliate. However, a competition is not yet sufficient in all areas to ensure universal service nor to guarantee just and reasonable rates.

15. We establish permissive detariffing procedures that allow URF Carriers to detariff telephone services via Tier 2 advice letters.

16. We intend for these detariffing procedures to apply to all URF Carriers, including the four major ILECs, CLECs, and IXCs.

17. It is not in the public interest for carriers to amend or lift tariffs containing conditions or requirements imposed through enforcement, complaint, or merger proceedings.

18. A carrier seeking to amend or lift a tariff containing conditions or requirements imposed as a result of a prior Commission enforcement, complaint, or merger case must file an application or petition to do so.

19. Detariffing of 911 services is not in the public interest.

20. Detariffing of dial-around services or other forms of direct connection to an interexchange carrier is not in the public interest.

21. Detariffing of obligations pursuant to existing state or federal law (such as Carrier of Last Resort obligations) is not in the public interest or lawful.

22. Detariffing of resale services or other services that were not granted full pricing flexibility in D.06-08-030 is not in the public interest.

23. Once a service is detariffed, the carrier need not file anything further with the Commission regarding the detariffed service, such as advice letters regarding rate changes or changes to terms and conditions. The carrier ~~also~~ does ~~not~~ need to file ~~the~~ both contracts and service rate changes for the detariffed service. The carrier must continue to notify a customer 30 days in advance of increased rates, or more restrictive terms and conditions for detariffed services and must post all available information on its website.

24. ~~The 18 month implementation period for detariffing does not apply to the carrier's offering of new services on a detariffed basis. For example, i~~If an URF Carrier seeks to offer new services on a detariffed basis after the 18 month implementation period, the carrier shall submit an informational filing to notify the Commission that it is offering the new service as a detariffed offering as long as the new service does not fall into the categories for which the Commission does not permit detariffing.

25. The filed rate doctrine does not apply to detariffed telephone services or services for which the Commission does not review and approve filed rates.

26. Detariffed telephone services and services for which the Commission does not review and approve filed rates are not subject to tariffed limitations of liability.

27. Ordering Paragraph 21 of D.06-08-030 was intended to permit carriers to file advice letters removing certain asymmetrical marketing, disclosure, and administrative requirements, as long as such requirements did not pertain to basic service; resale service; include requirements imposed on a carrier as a result of an enforcement, complaint, or merger proceeding; or contain obligations related to Carrier of Last Resort requirements or state or federal law.

28. As of the effective date of this decision, URF Carriers that seek to remove conditions or obligations imposed in their tariffs as a result of an enforcement, complaint, or merger case, must file a petition or application to modify the underlying decision that imposes the conditions, obligations, or penalties.

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